REMARKS:

Applicant has carefully studied the Final Examiner's Action and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Drawings

The drawings have been objected to under 37 CFR 1.83(a). The Office states that the drawings fail to show electrode 21 as described in the specification at page 20.

A proposed drawing correction to Figure 9 has been presented in which elements 20 and 21 have been added to more clearly illustrate the present invention.

Claim Rejections – 35 U.S.C. § 112

The Office has rejected Claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 has been cancelled without prejudice.

Claim Rejections – 35 U.S.C. § 102

Applicant acknowledges the quotation of 35 U.S.C § 102(e).

Claims 1, 3, 13, 28, 33 and 61 stand rejected under 35 U.S.C § 102(e) as being anticipated by Hofmann (U.S. Patent No. 6,009,345). The Office contends with reference to Figure 6 of Hofmann, that Hofmann discloses a device for manipulating a molecule in vivo where the sum of electrode members and conductive portions is at least three, having two rectangular electrode members 124, 126 where conductive portions are separate from nonconductive portions, first and second electromagnetic fields are

generated to manipulate a molecule and cause cell permeability via different voltages, the portions are on separate electrode members.

Applicant respectfully traverses the finding of the Office.

Independent Claim 1 has been amended to clarify that which is being claimed and is not to be interpreted as being substantially related to patentability. With reference to Figure 10, the device of the present invention comprises at least four generally rectangular striplike electrode members having at least one conductive portion, whereby the conductive portions are independently addressable by a source of electrical energy. The present invention, as described and claimed, includes at least two of the conductive portions positioned on different electrode members and locatable against a selected portion of the target tissue being configured to establish a first electromagnetic field between the at least two conductive portions sufficient to manipulate a molecule relative to a target tissue, and at least two of the conductive portions positioned on different electrode members and locatable against a selected portion of the target tissue being configured to establish a second electromagnetic field sufficient to cause transient permeability of a cell membrane within the target tissue.

By contrast, Hofmann describes with reference to Fig. 1, two electrodes members having conductive portions. Hofmann describes at col. 6, beginning at line 30, the electrode assemblies 12 and 14 are each made up of opposing electrodes functioning in the electroporation mode and when the system is converted to the iontophoresis mode, the electrodes of each electrode assembly are then connected in parallel such that each assembly becomes an electrode, thus the assembly 12 becomes a single electrode and the assembly becomes a single electrode in the iontophoresis mode.

As such, Hofmann does not describe two conductive portions positioned on different electrodes locatable against a selected portion of the target tissue being configured to establish a first electromagnetic field between the at least two conductive portions sufficient to manipulate a molecule relative to a target tissue, and at least two of the conductive portions positioned on different electrode members and locatable against a selected portion of the target tissue being configured to establish a second electromagnetic field sufficient to cause transient permeability of a cell membrane within the target tissue. Hofmann instead describes the use of two electrode members with conductive portions positioned on the same electrode member to manipulate a molecule relative to a target tissue.

Additionally, Hofmann does not suggest the use of four electrode members effective, wherein two electrode members are effective in providing electromigration and two electrodes members are effective is providing electroporation. By contrast, Hofmann suggests the use of only two electrode members for

providing both electromigration and electroporation through the use of a switches, a switchable power supply and meander electrodes.

For the reasons cited above, Applicant believes that amended independent Claim 1 is patentable over Hofmann (U.S. Patent No. 6,009,345) and is believed to be in condition for allowance.

Claims 13, 28, 33, 61 are dependent upon claim 1, and are therefore allowable as a matter of law.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

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Dated: July 8, 2004

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CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this Response to Notice of Non-Compliant Amendment (37 CFR 1.121) is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3763, Attn.: Michael J. Hayes, (703) 872-9302 on July 8, 2004.

Dated: July 8, 2004

Charlene Morgan